

TRANSCRIPT OF PROCEEDINGS

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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In the Matter of:

Patrick Sullivan
(Assignor)

and

Lake Broadcasting, Inc.
(Assignee)

Application for Consent to Assignment of License
of FM Translator Station W238CE, Montgomery,
Alabama

MB Docket No. 14-82

FRN 0003749041, 0006119796, 0006149843,
0017196064

Facility ID No. 146162

File No. BALFT-20120523ABY

DATE OF HEARING: February 16, 2017 **VOLUME:** 4

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BEFORE THE
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WASHINGTON, D.C. 20554

IN THE MATTER OF:	:	MB Docket No.
	:	14-82
PATRICK SULLIVAN	:	
(Assignor)	:	FRN 0003749041,
	:	0006119796,
and	:	0006149843,
	:	0017196064
LAKE BROADCASTING, INC.	:	
(Assignee)	:	Facility ID No.
	:	146162
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Assignment of License of FM:	:	File No. BALFT-
Translator Station W238CE,	:	20120523ABY
Montgomery, Alabama	:	
	:	

Volume IV

Thursday,
February 16, 2017

Federal Communications Commission
445 12th Street, SW
Hearing Room A
Washington, D.C. 20554

The above-entitled matter came on for hearing, pursuant to notice, at 10:30 a.m.

BEFORE:

THE HONORABLE RICHARD L. SIPPEL,
Chief Administrative Law Judge

APPEARANCES:

On Behalf of Patrick Sullivan and Lake
Broadcasting, Inc.:

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On Behalf of The Federal Communications
Commission:

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ALSO PRESENT:

RACHEL FUNK, Clerk

P-R-O-C-E-E-D-I-N-G-S

(10:30 a.m.)

JUDGE SIPPEL: We're on the record. I call this a status conference in the Patrick Sullivan, et. al. case, MB Docket No. 1482.

I'm going to take appearances of counsel. For Lake Broadcasting?

MR. JACOBS: Jerold L. Jacobs for Patrick Sullivan and Lake Broadcasting, Inc.

JUDGE SIPPEL: Good morning, Mr. Jacobs, and for the Bureau?

MR. KNOWLES-KELLETT: William Knowles-Kellet and Gardy Oshinsky for the Bureau.

JUDGE SIPPEL: Welcome, gentlemen. So, I think the first order of business ought to be with the hearing, and then we can get into the other things, in terms of shrubbery.

I've -- I'll let you know. It's -- I just, off the record, got into -- I don't mean to say you, off the record. I just got into a brief conversation with Mr. Oshinsky yesterday, and mentioning to him that I had a conflict with the April 25th date.

So, we hash -- didn't hash it out, but I mean, we just rolled around a little bit, and we come up with a date of May 2nd.

So, obviously, we have to proffer this date to you,

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1 Mr. Jacobs.

2 MR. JACOBS: Well, that date was proffered to me
3 yesterday off the record, and it's agreeable to us.

4 JUDGE SIPPEL: We get more accomplished off the
5 record than anything else.

6 MR. JACOBS: Yes.

7 MR. OSHINSKY: Your Honor, I just want to note, we
8 actually cleared that date with both of our witnesses.

9 JUDGE SIPPEL: Yes.

10 MR. OSHINSKY: However, one of our witnesses, Dr.
11 Weitel, is involved in another case within a day or so before
12 our's.

13 So, she's requested that she be scheduled on the
14 4th, May the 4th, and with that proviso, we're fine with the
15 2nd.

16 JUDGE SIPPEL: Anybody have any objection to that?

17 MR. JACOBS: I think that would be fine.

18 JUDGE SIPPEL: That's fine. Now, what I've got
19 here is I've got this -- I don't know exactly what all is
20 pending here.

21 But the biggest thing seems to be this question
22 about the Bureau's witness.

23 MR. KNOWLES-KELLETT: Before we go there, Your
24 Honor, the State of Missouri, one of our witnesses, Ms.
25 Gremminger --

1 JUDGE SIPPEL: Yes.

2 MR. KNOWLES-KELLETT: -- this is the one we had to
3 subpoena to --

4 JUDGE SIPPEL: Right.

5 MR. KNOWLES-KELLETT: -- to clear with her office.

6 JUDGE SIPPEL: Yes.

7 MR. KNOWLES-KELLETT: Her office requested if it's
8 possible, that she testify by video link, and we don't know
9 if that would be possible.

10 JUDGE SIPPEL: No way, Jose. That's not going to
11 happen that way. Not in this case. Not with this -- this is
12 -- there's too much riding here. She's too important. She's
13 critical.

14 I don't want to get into that video stuff. I don't
15 absolutely trust it. It's a routine matter, that would be
16 different. But this -- this is -- this witness goes to the
17 heart of your case and I want the witness right here.

18 MR. KNOWLES-KELLETT: Okay, we told Missouri we
19 would make a request and we'll go back to that.

20 JUDGE SIPPEL: You gave your word and you followed
21 through.

22 MR. KNOWLES-KELLETT: Yes.

23 JUDGE SIPPEL: So, okay, anything else
24 preliminarily?

25 MR. OSHINSKY: No, I don't think so.

1 JUDGE SIPPEL: I would take it, Mr. Jacobs, that
2 you would not agree to do that, would you?

3 MR. JACOBS: I'm open.

4 JUDGE SIPPEL: Oh boy. All right.

5 MR. JACOBS: But I yield to your experience, Your
6 Honor.

7 MR. OSHINSKY: Your Honor, if I might just say a
8 word.

9 One, couple of points that Ms. Gremminger is
10 testifying without any compensation. She is testifying outside
11 of the normal round of her obligations at the Department of
12 Corrections in Missouri, which are substantial.

13 So, more than a question of expense, it was a
14 question of logistics and for her to be away from her job and
15 away from her regularly scheduled duties, which are
16 considerable, that the request was made by the legal counsel
17 and legal department of the Department of Corrections.

18 So, if Mr. Jacobs is not objecting to it, we'd ask
19 that Your Honor consider it.

20 JUDGE SIPPEL: Well, let me just -- I am end -- let
21 me reconsider it, and I'm probably not going to have an answer
22 for you, maybe I'll have an answer for you this afternoon.

23 MR. OSHINSKY: That's fine, Your Honor.

24 MR. JACOBS: I might add, Your Honor, that as you
25 know, I have previously very openly stated our intention to

1 seek the disqualification of Ms. Gremminger as a witness.

2 I gather that you would not wish to entertain a
3 formal motion to that effect, until the admissions sessions
4 for exhibits, and I don't know how much time you would want
5 to consider such a motion.

6 But the obviate the need for Ms. Gremminger to
7 come.

8 JUDGE SIPPEL: What would be the basis for the
9 motion? I know we talked about this before.

10 MR. JACOBS: That she is absolutely not an expert.

11 JUDGE SIPPEL: But that could be done on -- well,
12 see, this is why I like to have witnesses here. This can be
13 done on voir dire, and if you -- if you convince me on voir
14 dire that you're not getting answers from her, you have a
15 right to make that motion.

16 But if she was testifying, she would only testify
17 as a layperson, not as an expert. She can still testify.

18 MR. JACOBS: Yes.

19 JUDGE SIPPEL: You know. So, I'll make that
20 determination at that point.

21 MR. JACOBS: Okay.

22 JUDGE SIPPEL: But my leaning towards allowing her
23 to come in and testify as an expert, based on initially
24 looking at the paperwork, I think.

25 Now, if you want to file some kind of a motion in

1 limine or something like that, that -- you know, to alert the
2 court that this is going to be raised as an objection and your
3 reasons thereto, Bureau has an opportunity to respond.

4 I mean, I don't have any problem with that.

5 MR. JACOBS: And I could do that --

6 JUDGE SIPPEL: Any time you want.

7 MR. JACOBS: At any time? Thank you, Your Honor.

8 JUDGE SIPPEL: Okay. Let's see. So, what are we
9 doing here with this -- with an objection to a status report,
10 Mr. Jacobs?

11 MR. JACOBS: Well, there were -- on December 12th,
12 the Bureau filed a pleading, which asserted that it had some
13 reason to believe that someone operating under representation
14 of Mr. Rice, someone claiming to represent Mr. Rice, had
15 threatened to pursue legal action against Ms. Gremminger if
16 she continued to participate in the hearing process.

17 The Bureau went on to say that the Missouri
18 Department of Corrections had instructed Ms. Gremminger to
19 have no further contact with the Commission or the Bureau
20 until their investigation was resolved, and therefore, the
21 Bureau asked Your Honor, to postpone the hearing until that
22 investigation was completed.

23 We objected --

24 JUDGE SIPPEL: Did I do that? Did I postpone the
25 hearing?

1 MR. JACOBS: Yes.

2 MR. OSHINSKY: You did.

3 MR. JACOBS: We objected on the grounds that no
4 facts had been submitted in support of this rather astounding
5 accusation against our client.

6 We pointed out the kinds of things that normally,
7 we thought might have been submitted.

8 Your Honor denied our motion, and ordered Mr. Rice,
9 our client, to submit an affidavit within about a month, in
10 which he would admit or deny any such involvement.

11 To emphasize our outrage, the very day that you
12 issued that order we filed Mr. Rice's declaration, stoutly
13 denying anything, and that was on December 22nd.

14 In the intervening almost three months, eventually
15 you issued a subpoena to try to find out more information and
16 --

17 JUDGE SIPPEL: That was for the purpose of -- of
18 getting that witness locked in. It wasn't seeking further
19 information, I don't think. Isn't that correct?

20 MR. KNOWLES-KELLETT: Yes.

21 JUDGE SIPPEL: So, I looked upon that -- that
22 subpoena as kind of a routine matter. I just subpoenaed the
23 telephone record, and you had -- they were going to give them
24 to you, but they wanted the subpoena first.

25 MR. JACOBS: Well, they did submit, Ms. Gremminger

1 and the Department of Corrections I guess, did submit some
2 documents and the Bureau filed a supplemental status report,
3 just two days ago, in which --

4 JUDGE SIPPEL: But you did object to the status
5 report. The first status report, you objected to.

6 MR. JACOBS: Right.

7 JUDGE SIPPEL: So, then they put the supplemental
8 in, in an effort to try and salvage --

9 MR. JACOBS: Correct.

10 JUDGE SIPPEL: Solve your concerns.

11 MR. JACOBS: Correct. But the way -- I had
12 requested, Lake had requested a pre-hearing conference because
13 the Bureau had ended up saying nothing more about the witness
14 intimidation issue.

15 So, it was kind of left lying on the table. Our
16 client was very upset by it, because it tarnishes reputation.

17 So, was asked for a conference to try to clear the
18 air on that issue, and the Bureau responded, I guess it was
19 just yesterday, saying on page three of its supplemental
20 status report, the Bureau is satisfied that neither Mr. Rice
21 nor anyone at his direction, was involved in any possible
22 intimidation of Ms. Gremminger.

23 The Bureau's additional investigation into this
24 matter has not led to any additional information.
25 Accordingly, the Bureau sees no reason to divert the parties

1 and the Judge's attention away from preparing for hearing, to
2 address what is now a non-issue.

3 Well, as far as Lake is concerned, it still is an
4 issue, for the simple reason, and I'm not standing on ceremony
5 here, but the Bureau has refused to explain how it began this
6 silly witch hunt, which I refer to in the current vernacular
7 as fake news, and has not apologized or in any way, indicated
8 that this was a big mistake, which it was.

9 I would like to have either Your Honor or the
10 Bureau, provide that kind of apology or explanation.

11 How did this happen? The Bureau was so full of
12 righteous indignation, on December 12th, when it asked Your
13 Honor to postpone the hearing. It said more importantly, page
14 two of its December 12th pleading.

15 If Mr. Rice or someone associated with him, and at
16 his direction, has threatened the Bureau witness, it raises
17 additional concerns about his qualifications to hold a
18 commission license, and may necessitate reopening the
19 discovery period, for the Bureau to conduct a through
20 investigation.

21 Well, as I said earlier, nothing was found, as far
22 as we know. I don't know what information the Bureau may have
23 put together. I have no idea why they concocted this pleading
24 on December 12th. It had the effect of delaying this
25 proceeding for two months, and then for them to just say no

1 additional information, it's a non-issue, I think is
2 insufficient.

3 My client doesn't want to go forward in this case.

4 JUDGE SIPPEL: What would your remedy be? What --
5 what remedy are you seeking?

6 MR. JACOBS: An apology.

7 JUDGE SIPPEL: I don't know if there's anything --
8 I don't know if there's an apology -- anything in there, in
9 the rubric of motions. Motion for an apology?

10 MR. JACOBS: Withdraw of its -- I don't know,
11 withdraw of its accusations. I mean --

12 JUDGE SIPPEL: Well, let me give an assurance. I'll
13 give you assurance. Based on the declaration of your client,
14 okay, I'm not going to hold any of this against him. He's
15 completely -- this is -- he's starts from the get-go as an
16 honest agent.

17 Now, what happens after that is different.
18 Cross-examination, you know, but to me, this is a non -- a
19 non-event. So --

20 MR. JACOBS: I'm relieved to hear that, Your Honor.

21 JUDGE SIPPEL: It is.

22 MR. JACOBS: That's very important to my client.

23 JUDGE SIPPEL: Okay. Now, let's hear from the
24 Bureau.

25 MR. KNOWLES-KELLETT: We did -- reported the rumor

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1 that we heard in December, and when we finally got in touch
2 with Mr. Boresi, who is legal counsel for Missouri, we asked
3 him, and he had no further information on who called the State
4 of Missouri or why --

5 JUDGE SIPPEL: Well, how was it -- was this done
6 by letter or email or --

7 MR. KNOWLES-KELLETT: We talked to him on the
8 phone.

9 JUDGE SIPPEL: But I mean, was this -- this is --
10 this so-called information transmitted --

11 MR. KNOWLES-KELLETT: We called up a colleague of
12 Ms. Gremminger's --

13 JUDGE SIPPEL: Yes.

14 MR. KNOWLES-KELLETT: -- and she said that the
15 rumor around the office was da da da, and if we misrepresented
16 that there was anything more to it than that, Your Honor, I
17 apologize to Mr. Jacobs.

18 JUDGE SIPPEL: Okay.

19 MR. KNOWLES-KELLETT: Because we had really
20 third-hand information. We needed time to investigate it.

21 When we asked Ms. Gremminger who called up the
22 Missouri Department and made it so that you stood down, until
23 legal cured the situation, she said, "I have no idea who the
24 identity of that person was," and combined with Mr. Rice's
25 assurance that it wasn't Rice or somebody at his directive,

1 we don't have anywhere to go with that, and we think the we
2 ought to get on with the merits of the matter, rather than
3 worry about that, because it appears to be have been an
4 unfounded rumor that it was Rice.

5 Now, what happened, we don't know but --

6 JUDGE SIPPEL: I'm more concerned about -- I'm more
7 concerned about a rumor that I have -- I don't know what
8 happened.

9 MR. OSHINSKY: Your Honor, if I could --

10 JUDGE SIPPEL: You mean there's nothing more than
11 a rumor? There's nothing --

12 MR. OSHINSKY: Your Honor, she was instructed by
13 her supervisor --

14 JUDGE SIPPEL: Okay.

15 MR. OSHINSKY: -- and in order for her to go any
16 further would have placed -- I think her job situation --

17 JUDGE SIPPEL: I understand that. I only --

18 MR. OSHINSKY: So, she was not told and I think
19 under the circumstances, I think it might be understandable
20 that they weren't trying to point the finger at anybody, but
21 that -- that she was told she could not communicate us or
22 assist us further without clearance from their legal
23 department, and really, that's the extent of it.

24 The colleague of Ms. Gremminger's that we spoke to
25 simply relaying what her understanding of the situation was,

1 that somebody possibly at Mr. Rice's direction, had complained
2 and therefore, this started the mechanism of their legal
3 department in motion.

4 JUDGE SIPPEL: She, this colleague of Ms.
5 Gremminger's, did she tell that to Ms. Gremminger, about how
6 this came about?

7 MR. KNOWLES-KELLETT: Our understanding is she
8 heard it from Ms. Gremminger, but Ms. Gremminger says --

9 JUDGE SIPPEL: She heard it from Ms. Gremminger?

10 MR. KNOWLES-KELLETT: That was our understanding.

11 JUDGE SIPPEL: All right.

12 MR. KNOWLES-KELLETT: But when we talked to Ms.
13 Gremminger, she said, "I didn't say who did it. I don't know
14 who did it."

15 You know, I can't identify who called the office.
16 I was told to stand down.

17 JUDGE SIPPEL: I understand, okay.

18 MR. KNOWLES-KELLETT: So --

19 JUDGE SIPPEL: That gets me there. That gets me
20 there. But this is not based on hard evidence that is email,
21 letter, phone call, prosecutor's office usually tapes every
22 phone -- well, I guess so.

23 MR. KNOWLES-KELLETT: We had --

24 JUDGE SIPPEL: This is nothing but a rumor.

25 MR. OSHINSKY: Your Honor, actually, what we did

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1 was relay the information that we had at the time.

2 JUDGE SIPPEL: Yes.

3 MR. OSHINSKY: And we've relayed several emails to
4 this effect. We actually asked the legal department to say
5 what the impediment was, and no information has been
6 forthcoming.

7 So, part of the reason that our status report
8 shows that we had -- or states that we had no further
9 information about this is that is the simple truth.

10 We have no further information. Ms. Gremminger has
11 been cleared to testify. That's the gravamen of the issue
12 here, whether she could -- she was available or not.

13 The continuance was based on her availability, not
14 on intimidation, but on whether she could be available or not,
15 and if she could not have been, then we -- the court would
16 have had to deal with that at that time.

17 So, we've reached the point where she's available.
18 The Bureau has no further information in this regard, and as
19 Mr. Knowles-Kellet has stated, we're willing to apologize
20 about the inconvenience of Mr. Rice having to file the
21 declaration.

22 But at this point, it is a non-issue. It doesn't
23 move the case forward at all, and Your Honor has said you're
24 not going to hold anything against Mr. Rice, just based on the
25 supposition.

1 So, we have at every step, relayed the information
2 that we've had, and we've never said anything more than that.

3 JUDGE SIPPEL: All right. I'm not worried about
4 Mr. Rice and the contents of this situation. I am worried
5 about Ms. Gremminger.

6 I mean, if she's giving this information -- I know
7 she was told by her superiors that she can't do it. But if
8 this is -- if this whole thing was just a ruse based on rumor
9 around the office, and she's -- is that going to affect --
10 what I'm asking is, is that going to affect her testimony?

11 MR. OSHINSKY: No, Your Honor.

12 JUDGE SIPPEL: You don't know that.

13 MR. OSHINSKY: The rumor is only the initial -- the
14 beginning of what the motivation was for instructing her not
15 communicate with the Bureau any further.

16 It's not a question of -- the rumor has to do with
17 how that got started. But she was instructed by her superior,
18 or her supervisor, that she could not communicate with us
19 until she was cleared by the legal department, and she did not
20 do so.

21 So, it was radio silence for that whole period of
22 time, and Your Honor graciously continued waiting for her
23 ability to assist the Bureau. So, as to where that started,
24 we don't know.

25 JUDGE SIPPEL: Well, that gives me concern. It

1 gives me concern. I'm concerned about two things.

2 I'm concerned about -- well, ultimately, I'm
3 concerned about whether it impacts her testimony in any way,
4 and also, I am concerned that when she was receiving these
5 instructions, these marching orders about shut it down, we'll
6 get back to you, what were people telling -- what were they
7 saying to her?

8 Did they give her anything in writing, that she
9 told off or --

10 MR. OSHINSKY: Yes, they told her that she could
11 --

12 JUDGE SIPPEL: Is that in writing? In writing?

13 MR. OSHINSKY: Oh, in writing? No. No, she was
14 simply told not to communicate with us further, as far as I
15 know.

16 MR. KNOWLES-KELLETT: We don't have any information
17 that she was given it in writing. Our understanding is, she
18 was told and Mr. Boresi confirmed that he told her not to --
19 that this had to be cleared and he needed a subpoena, before
20 she could participate any further.

21 JUDGE SIPPEL: Well, you see, I'm having trouble
22 getting my hands around this because if there was nothing that
23 was -- you know, if the traditional bloody letter's been sent
24 in and saying things that's going on here, and it's just a --
25 then there's no telephone -- no record of a telephone call,

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1 no record of anything, and this is a rumor around the -- you
2 know, I don't know how prosecutor offices -- well, I don't
3 know that one, but I mean, in general, prosecutor office, it's
4 comparable to a den of thieves in a way.

5 I mean, they just talk willy-nilly, and I'm just
6 wondering about how -- what was the extent of that talk, the
7 extent of the rumor and how could it possibly affect Ms.
8 Gremminger?

9 I mean, she might be -- she might agree to testify
10 as an honest -- until this -- these people got to her and
11 said, "Oh, Rice is really bad."

12 MR. OSHINSKY: Your Honor, the threshold issue is
13 whether the legal department -- the legal department for the
14 Department of Corrections was going to allow her to assist the
15 FCC.

16 Very possibly, it might involve flying her out here
17 to testify. It would involve a lot of her time. Those were
18 the questions that needed to be answered by the legal
19 department, apparently, and they then did give their
20 clearance.

21 So, as to what started -- who called, who contacted
22 Department of Corrections, we don't have any further
23 information. There's no hard information, or we would have
24 relayed it to the court.

25 So, all we know is that she was directed to stand

1 down, until she received legal clearance and then -- then we
2 had to send the subpoena for that reason, and we were
3 instructed to do that and that's what we did, and that
4 subpoena alerted her legal department, and they then gave the
5 clearance.

6 JUDGE SIPPEL: I'm not -- I understand that, but
7 I'm not quite sure you were -- that you understand my
8 concerns.

9 My concern is not for how the administrative back
10 and forth went on to clear her. I'm concerned about what the
11 hell was going on there, that if this -- if there's been no
12 hard evidence -- well, any evidence of a threat or whatever
13 this is called, and all this is being done, shut down, yes,
14 consider, what does -- what the hell is that based on? What
15 can you possibly base that on to do all that? Shut a case
16 down. Shut a -- a witness down. Look into it. What are they
17 looking into?

18 MR. KNOWLES-KELLETT: My understanding from Mr.
19 Boresi, who is the person who we dealt with the subpoena,
20 assisted on the subpoena, is that their privacy statutes in
21 Missouri, they don't -- they're not comfortable with their
22 documents or testimony going out without a subpoena.

23 So, he said, I need a subpoena before she
24 participates anymore.

25 JUDGE SIPPEL: Well, that's her. Okay, that's her.

1 But and you know, I'm not criticizing his concern.

2 What I'm saying is I'm not even -- at this point,
3 not even interested in getting the evidence directly. I mean,
4 eventually I would, but what is this whole thing based on? Is
5 it a letter? A phone call? Telegram? Smoke signals?

6 I mean, there was just something that -- how did
7 it -- how did they -- how did it get -- how did they get this
8 in their head?

9 MR. OSHINSKY: Well, apparently there was a call
10 or some kind of contact, requesting that she not participate
11 any further without -- you know, without going through proper
12 legal channels, and we don't know where that came from.

13 JUDGE SIPPEL: But the basis --

14 MR. OSHINSKY: We only know that it was relayed to
15 her and that she was prohibited by her supervisor, and by the
16 legal department, from assisting the Bureau further, without
17 a subpoena, and that seems to be the crux of it.

18 It's very similar to what Your Honor, just talked
19 about with telephone records. Yes, they -- there may be no
20 legal impediment to getting those records, except that you
21 have to go through the formality of issuing a subpoena to get
22 them.

23 There isn't a legal obstacle to it, but there is
24 a legal procedure that has to be gone through, and that
25 apparently was the problem here. The correct legal procedure

1 was that problem.

2 JUDGE SIPPEL: So, you think it's a question of
3 maybe being overzealous and complying with this privacy
4 whatever it is?

5 MR. OSHINSKY: Yes, I think Ms. Gremminger was
6 aiding the Bureau. She needed official clearance to do so, and
7 certainly, to appear in court, and that official clearance had
8 to be based on the subpoena.

9 That seems to be the extent of what the -- the --

10 JUDGE SIPPEL: Well, that part doesn't bother me.

11 MR. OSHINSKY: Well, there's --

12 JUDGE SIPPEL: I mean, I could understand --

13 MR. OSHINSKY: That's all that's at play here, Your
14 Honor.

15 JUDGE SIPPEL: I don't think that's all that's in
16 play, because if Ms. Gremminger takes that stand, she's going
17 to be asked about this. Has anyone --

18 MR. OSHINSKY: About what?

19 JUDGE SIPPEL: Who? Who talked to you about this?
20 How did you get the information? Has it impacted your
21 testimony today? I mean, I'm telling you right up front, so
22 you can learn.

23 MR. OSHINSKY: I think that's fair, Your Honor.

24 JUDGE SIPPEL: Yes, I don't --

25 MR. OSHINSKY: Yes, I think you'll be satisfied

1 after you speak to her.

2 JUDGE SIPPEL: Have you done the same thing? Have
3 you talked to her this way?

4 MR. OSHINSKY: We've asked her and she's indicated
5 she has no information other than she was told her by her
6 supervisor that she had to stand down, until the proper legal
7 process for the department was followed.

8 JUDGE SIPPEL: See, that's the part I don't
9 understand. That's the part I don't understand.

10 If you have people in a prosecuted -- you know, in
11 a -- whatever it is, an AG office, and they're told to stand
12 down from something like testimony --

13 MR. OSHINSKY: Well, Your Honor --

14 JUDGE SIPPEL: -- you think they would say to them,
15 "Look, here, we've got this letter," or we got this something,
16 but it's giving us some concern.

17 Perhaps, I show it to her. But it's giving us some
18 concern. But she -- all the sudden, somebody walks in and
19 says, forget about testifying, until we get something cleared
20 up. I mean --

21 MR. OSHINSKY: Yes, there could have been an
22 objection like that, and it could have been as much as -- as
23 little as a simple phone call, and then would have looked at
24 it and questioned her and then said, you can't do anymore
25 until you get legal clearance, and I think that's exactly what

1 happened here.

2 JUDGE SIPPEL: But do you see what I'm concerned
3 about? If it was simple phone call, I think we would have
4 that information by now, that it was a simple phone call.

5 We're getting something of it from a compatriot of
6 her's, that says it was office rumor. That's different than
7 a phone call.

8 MR. OSHINSKY: She did not go back up the chain of
9 command to question where the information came from, and she
10 didn't do that probably in her own self-interest.

11 JUDGE SIPPEL: Well, I don't want -- obviously, I
12 don't want this to get sidetracked, but I'm going to have some
13 serious questions to ask her, and the floor is open to Mr.
14 Jacobs to ask her, if my questions don't satisfy him. He can
15 go forward on it.

16 But I just want to let you know that I have that
17 concern and that as -- I'm starting to now formulate a better
18 reason why she should be here. But I still haven't come to
19 that solution yet.

20 I mean, in other words, I like the witness here on
21 the stand, to see, you know, all the stuff that witnesses do.

22 MR. OSHINSKY: Yes, to be honest Your Honor, we'd
23 prefer that too. But we're trying to accommodate her because
24 she --

25 JUDGE SIPPEL: I understand.

1 MR. OSHINSKY: -- she's volunteering her time --

2 JUDGE SIPPEL: I understand.

3 MR. OSHINSKY: -- her effort and she put in a great
4 deal of effort already and she has to go through clearances
5 in order to do that, now, at least.

6 So, we would -- if we had our druthers we'd prefer
7 her to be here too, but we're trying to accommodate you know,
8 her situation. She is a busy parole and probation officer.

9 But of course, as Mr. Knowles-Kellett has
10 indicated, that we made the request. We said we'd promise
11 their legal counsel we would make the request, and we've made
12 it.

13 We think there is a basis for it, and if Your Honor
14 -- Your Honor can, of course, is entitled to question her
15 about any area that you want.

16 JUDGE SIPPEL: Well, this voir dire is not the
17 purpose of going into this thing. I don't want to --

18 MR. OSHINSKY: Our viewpoint --

19 JUDGE SIPPEL: -- get sidetracked.

20 MR. OSHINSKY: Yes, our viewpoint is that the delay
21 in the case was unfortunate, and the circumstances are
22 unfortunate, but she's available to testify now. That is the
23 crux of the issue here.

24 She is local law enforcement and under the
25 precedent in the Commission, there is no better evidence than

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1 what she can supply.

2 So, we're asking the court to accommodate her, if
3 Your Honor sees fit.

4 JUDGE SIPPEL: Okay, well, it's the old -- maybe
5 there's a Chinese proverb. I know there's one in the military.
6 Don't volunteer for anything.

7 MR. OSHINSKY: Your Honor, she may -- after this
8 experience, she may never volunteer for anything again,
9 because this has caused her nothing but heartburn.

10 JUDGE SIPPEL: I can see that. I can see that.

11 MR. JACOBS: Your Honor, could I ask --

12 JUDGE SIPPEL: Yes, I'm sorry.

13 MR. JACOBS: You'll agree with what I say. Much
14 prefer to have her here. Yes.

15 JUDGE SIPPEL: Now you prefer to have her, but do
16 you agree with the questioning that --

17 MR. JACOBS: Yes.

18 JUDGE SIPPEL: -- I'm interested in here?

19 MR. JACOBS: Yes, of course. Yes, and then Mr.
20 Oshinsky said at the conclusion of his remarks, that she is
21 a representative of local law enforcement.

22 I don't want to seem to be focusing on semantics,
23 but it's our view that she's not part of law enforcement, that
24 parole and probation is not law enforcement. It's part of
25 the Department of Corrections.

1 But I'm afraid that the Bureau is attempting to use
2 that phrase to draw and improper analogy, to the David Titus,
3 where the chief of the Seattle police was a witness, and had
4 very strong views on whether Mr. Titus would be a recidivist,
5 and that's not this situation.

6 Ms. Gremminger is not the chief of police. She is
7 not a sworn police officer. She is a mere probation officer,
8 and I -- of course, we would elaborate on that in questioning
9 her credentials --

10 JUDGE SIPPEL: Yes.

11 MR. JACOBS: -- at hearing

12 JUDGE SIPPEL: Perfectly proper.

13 MR. JACOBS: But in the meantime I'm just trying
14 troubled by any efforts to hype her credentials into more than
15 what they really are.

16 JUDGE SIPPEL: Well I didn't really focus on that.
17 You did focus on that. But this is just a conference. That's
18 not evidence.

19 So, I just -- I'm not going to -- obviously, I see
20 your point, and it's very well taken, but that would be the
21 place to figure it out.

22 The best way to get to that is who picked -- who
23 sent you the check and who pays your telephone bills, and we
24 know who she's working for.

25 Okay, I think that's -- that's clear enough. Now,

1 you're withdrawing your -- not your approval, but your
2 willingness to go along with the -- the video testimony, and
3 now, you've reversed yourself on that.

4 MR. JACOBS: Yes.

5 JUDGE SIPPEL: Okay, again, I'm going to hold this
6 into -- I'll hold this under consideration.

7 MR. JACOBS: Now, you asked what other concerns we
8 had.

9 JUDGE SIPPEL: Well, let be see if the Bureau --
10 let me see what the Bureau -- are you all set with that now?
11 This is how we're going to handle it.

12 MR. OSHINSKY: If Your Honor is going to consider
13 the question and -- of video testimony we -- again, we would
14 just emphasize the fact that this is an unpaid witness, Your
15 Honor, who is taking time out of her work week to do this.
16 Who knows? She may have to use --

17 JUDGE SIPPEL: Well, let me ask you a question.
18 Is the -- is the -- is the FCC going to pay for her travel
19 fare?

20 MR. OSHINSKY: Yes, of course.

21 JUDGE SIPPEL: So, what's the big deal?

22 MR. OSHINSKY: She get to -- it's her work time,
23 Your Honor.

24 JUDGE SIPPEL: She gets to see D.C. It's a
25 beautiful place.

1 MR. OSHINSKY: That's true.

2 JUDGE SIPPEL: And it's in the Spring now.

3 MR. OSHINSKY: That's true.

4 JUDGE SIPPEL: You know?

5 MR. OSHINSKY: It may not be -- as we understand
6 it, it's the inclination of her legal counsel, legal
7 department to want her there at work, rather than traveling
8 and staying. But again, Your Honor is the decider for that.

9 JUDGE SIPPEL: Then she's not -- apparently, she's
10 not what Mr. Jacobs suggested she might be, that is just a
11 parole officer, sitting someplace outside the prosecutor's
12 office.

13 MR. OSHINSKY: Your Honor, parole and probation
14 officers often have many, many years of experience in the
15 standards of -- you know, of criminal enforcement, and this
16 particular witness has that. If you look at her training, you
17 can see that.

18 JUDGE SIPPEL: Yes.

19 MR. OSHINSKY: But that is her job to do, is to
20 make determinations about the risk of sexual recidivism, and
21 there is really no better person to do it, and whether she's
22 a paid expert or not is not the question here.

23 JUDGE SIPPEL: No, I'm not -- well, no, I'm not
24 getting to that.

25 MR. OSHINSKY: Well, I'm going --

1 JUDGE SIPPEL: Just how inconvenienced is she going
2 to be to come here?

3 MR. OSHINSKY: Well, I mean, inconvenience in terms
4 of her work schedule, I think is the way --

5 JUDGE SIPPEL: Right.

6 MR. OSHINSKY: -- her legal counsel is looking at
7 it.

8 JUDGE SIPPEL: You know, she should have thought
9 of that when she volunteered to do this.

10 I mean, you know, you can't --

11 MR. OSHINSKY: We don't want to make her regret
12 volunteering.

13 JUDGE SIPPEL: It may very well do that. But I
14 really -- you know, I really don't care about that. I care
15 about getting it done, right here.

16 So, I would just suggest you don't push me. Let
17 me think a little bit on that.

18 MR. OSHINSKY: Yes, Your Honor. I didn't mean to
19 do that.

20 JUDGE SIPPEL: So, as far as when you call her up,
21 is there an answering service that says, "This is the
22 Department of Parole," and that kind of stuff?

23 MR. OSHINSKY: Yes, Your Honor.

24 JUDGE SIPPEL: It's not the -- the DA's office?

25 MR. OSHINSKY: No. No, Your Honor, this is -- the

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1 Department of Corrections is equivalent to the Bureau of
2 Prisons here.

3 JUDGE SIPPEL: Okay.

4 MR. OSHINSKY: It's -- I mean, that's their main
5 business. Their legal counsel's department is probably not
6 active in 90 percent of the cases.

7 JUDGE SIPPEL: But it was the legal department or
8 the -- of the enforcement officer -- prosecutor, wasn't it?

9 MR. OSHINSKY: Well, it was the legal department
10 of the Missouri Department of Corrections.

11 JUDGE SIPPEL: Okay, I got you.

12 MR. OSHINSKY: Yes, there's no prosecutorial hand
13 in this at all. That was the legal department that represents
14 the Missouri Department of Corrections. That is equivalent
15 to the Bureau of Prisons here. It's not -- it wouldn't be
16 typical for them to be involved.

17 MR. KNOWLES-KELLETT: It was very much like talking
18 to OGC at the FCC, Your Honor. They were handling all sorts
19 of legal issues for the prison system, and she said if she's
20 going to cooperate with you, I'm going to need a subpoena.
21 It would be the equivalent of like talking to David Senzel or
22 somebody asking for the cooperation of an FCC employee in a
23 suit.

24 JUDGE SIPPEL: Well, I would take Mr. Senzel's
25 opinion very highly. But the -- I'm just trying to still get

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1 to this.

2 They knew that she was going to -- she was
3 assisting you, correct? I mean, when I say 'they', I mean her
4 office.

5 MR. KNOWLES-KELLETT: Prior to our letter --

6 JUDGE SIPPEL: Did they --

7 MR. KNOWLES-KELLETT: -- the guy in the legal
8 office did not know at that time of her deposition, that she
9 was helping us.

10 We sent a letter and he said, "I need a subpoena
11 before she assists you."

12 JUDGE SIPPEL: So, she never -- she or her
13 supervisor had never checked with their legal department
14 before --

15 MR. KNOWLES-KELLETT: That's my --

16 JUDGE SIPPEL: -- until just that time?

17 MR. KNOWLES-KELLETT: Right. That's my
18 understanding, and they would have insisted on a subpoena.

19 JUDGE SIPPEL: All right. So did -- who was it
20 that communicated that information about the rumor or about
21 whatever it was about -- up to the legal department?

22 MR. KNOWLES-KELLETT: I don't know. It may have
23 been us, Your Honor. I don't know. We don't have any
24 information. We asked --

25 JUDGE SIPPEL: Well, do you think that -- I'm

1 sorry, I didn't mean to cut you off, but you don't think that
2 that had anything to do -- that does not impact the
3 requirement for a subpoena.

4 They wouldn't care whether that happened or not.
5 They were going to -- they were going to -- you know, cover
6 their you know what. You've got to give us a subpoena.

7 MR. OSHINSKY: Exactly, Your Honor.

8 JUDGE SIPPEL: Which is normal practice in any --
9 well, any organization, really.

10 MR. OSHINSKY: Correct.

11 JUDGE SIPPEL: Certainly, you know, Department of
12 Corrections or any -- I understand. I understand that, okay.

13 Well, that may shed -- that may put it in another
14 light. But I'm still not going to -- it's still not going to
15 stop the voir dire that I suggested.

16 MR. OSHINSKY: Okay.

17 JUDGE SIPPEL: That's enough said. That clears a
18 lot up though. Thank you very much for doing that.

19 MR. JACOBS: Your Honor, before we leave the
20 question of how Ms. Gremminger came to testify, that question
21 came up in her deposition, and we asked her if -- she prepared
22 a statement, and we asked her if she had shown that statement
23 to her supervisors, and I think her answer was no.

24 We asked her --

25 MR. OSHINSKY: Your Honor, if Mr. Jacobs is trying

1 to enter evidence on the record --

2 JUDGE SIPPEL: No, this isn't evidence. This is
3 her deposition, that's all.

4 MR. OSHINSKY: Yes, so, I would ask what the
5 purpose of this proffer is.

6 JUDGE SIPPEL: That's legitimate.

7 MR. JACOBS: I believe it was said a few moments
8 ago, that they knew -- that her office knew that she was
9 coming to the deposition.

10 MR. OSHINSKY: Yes, I think she said that.

11 MR. JACOBS: And I think that she testified just
12 the opposite, at the deposition. Let's see here.

13 JUDGE SIPPEL: Well, that's a credibility issue.
14 I mean, maybe you have her nailed on a credibility issue but
15 -- we'll see what that --

16 MR. JACOBS: So, she says, "I'm here today as an
17 expert witness to testify in this case."

18 "So, you're kind of on your own?" "Yes." "You're
19 not here as part of your official employee?" "That is
20 correct."

21 "Do your superiors know that you're here?" "Yes."

22 "But you're not here in any official capacity?"

23 "No, sir. I'm here as an expert witness to testify."

24 JUDGE SIPPEL: I don't see any problem with that.

25 MR. JACOBS: Okay.

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1 JUDGE SIPPEL: Are we finished with this issue?

2 MR. JACOBS: Well, there were five objections that
3 I raised to the status report, and with Your Honor's
4 permission, I just would like to go through those things, and
5 see where we stand with them.

6 JUDGE SIPPEL: Can we finish them before lunch?

7 MR. JACOBS: Oh, yes. This will just take a few
8 moments.

9 JUDGE SIPPEL: All right, take the next one.

10 MR. JACOBS: Question was if the Bureau supplied
11 copies of the subpoena. So, they did now, in the supplement.

12 The Bureau has not provided complete copy of the
13 responses. Well, I'm not clear about that. I think they may
14 have given us the actual pages of the subpoena responses.

15 A list of cases that Ms. Gremminger has testified
16 on, seem to be missing information, and she didn't add
17 anything to that.

18 So, it's going to be a little hard to check, to see
19 what her role was in those cases, and if we ever get to this
20 point, I will cross-examine her about every one of those
21 cases.

22 JUDGE SIPPEL: Well, you should have that
23 opportunity. But I'm going to just ask the Bureau now.

24 I'm sorry, I don't mean to interrupt you, but could
25 you look into that, and be sure to just list every single case

1 that she's testified to, or if you received --

2 MR. KNOWLES-KELLETT: We asked her to list every
3 case, and she said she listed all in the last four years.

4 JUDGE SIPPEL: Oh.

5 MR. KNOWLES-KELLETT: So, she said she doesn't have
6 records going back further. She was going to check.

7 She had offered to Mr. Jacobs, to try to get him
8 all the cases she ever did, and she requested from her office,
9 and she said this is how far back our records go. That's my
10 understanding. So --

11 JUDGE SIPPEL: Well, did you --

12 MR. KNOWLES-KELLETT: -- that's what she has.

13 JUDGE SIPPEL: Would you just look into that again?

14 MR. KNOWLES-KELLETT: Make sure that this is the
15 last four?

16 JUDGE SIPPEL: Yes, that this is the best she can
17 do.

18 MR. KNOWLES-KELLETT: Okay, yes.

19 JUDGE SIPPEL: Or if she's got any other ideas
20 since then.

21 MR. JACOBS: In terms of identifying the cases.

22 JUDGE SIPPEL: Yes. You're entitled to getting a
23 full deck.

24 MR. JACOBS: Now --

25 JUDGE SIPPEL: What's the next? What was the next

1 one?

2 MR. JACOBS: The next one is a list of
3 certifications does not include copies of certificates. Now
4 --

5 MR. KNOWLES-KELLETT: You got her email back. I
6 don't have them.

7 MR. JACOBS: At deposition, I asked her, "Do you
8 have any expert certificate?" Answer, "Yes." "You do?"
9 "Uh-huh."

10 "Would you please supply us with a copy of that,
11 and when did you receive that certificate?" "Throughout the
12 years I received certificates of completion." "Oh, several?"
13 "Yes, sir."

14 "So, I would appreciate it if you would give us
15 copies of all of them," and this is pages 36 and 37 of her
16 deposition.

17 Now, we come to her February 7th, 2017 memo to Mr.
18 Oshinsky, and she says, "I have no certifications of training
19 to provide you."

20 MR. KNOWLES-KELLETT: What she meant by that, Your
21 Honor, she gave us the list that her office maintains of the
22 things -- the training she completed. But she didn't have the
23 actual printout of the certificates.

24 In fact, you can ask her on the stand, but that's
25 what she told us.

1 JUDGE SIPPEL: Well, I save all of mine.

2 MR. JACOBS: Yes, me too.

3 JUDGE SIPPEL: Does she rely on the organization
4 to have them? It's -- okay, what's the next thing? What's
5 the next thing?

6 MR. JACOBS: And then the last thing was the
7 kerfluffle about the witness intimidation.

8 JUDGE SIPPEL: All right.

9 MR. JACOBS: So, I guess we have covered all of the
10 issues. I'm still unhappy on the certification point, and the
11 identification of cases.

12 MR. OSHINSKY: We will ask again about that, and
13 I think that you received --

14 JUDGE SIPPEL: I don't want to brow beat it but
15 just --

16 MR. OSHINSKY: Yes, and I think she received these
17 trainings in the course of her employment.

18 JUDGE SIPPEL: Yes.

19 MR. OSHINSKY: Apparently, she did not save and
20 frame the certificates and didn't have -- and does not have
21 copies of --

22 JUDGE SIPPEL: We're not talking about the framing.

23 MR. OSHINSKY: So, we will ask again. But this is
24 the information the Bureau has.

25 JUDGE SIPPEL: You'll take these certificates

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1 without framing?

2 MR. JACOBS: Yes. In fact, we might even provide
3 frames.

4 JUDGE SIPPEL: That's fine. You know, but she can
5 be asked this again on the stand on voir dire, you know, if
6 she just made a reasonable effort to find this information.

7 MR. KNOWLES-KELLETT: I think she testified that
8 she took a lot of these courses in the early 90s, Your Honor,
9 and you know, the stuff I had before you in the early 90s is
10 gone.

11 JUDGE SIPPEL: Okay, that's -- I mean, all these
12 answers sound -- this all sounds very reasonable. Ask her to
13 just try and just make a second sweep of things without --

14 MR. KNOWLES-KELLETT: Okay.

15 JUDGE SIPPEL: -- causing her great disarray. I
16 mean, disarray or work. I'm trying to avoid that.

17 MR. KNOWLES-KELLETT: Okay.

18 JUDGE SIPPEL: Is there anything else then?

19 MR. OSHINSKY: Your Honor, there's one final
20 matter. Is Your Honor going to issue a pre-hearing schedule?

21 JUDGE SIPPEL: We haven't done that? You mean like
22 with dates?

23 MR. OSHINSKY: Yes, yes.

24 JUDGE SIPPEL: Did we do that?

25 MR. JACOBS: No.

1 MR. OSHINSKY: No, but I would think Your Honor
2 would do that after -- since we picked the date today.

3 JUDGE SIPPEL: Oh, yes, sure. I will do that. I'll
4 be glad to do that.

5 Does anybody want -- you want to get together and
6 give me an outline of what you want, you know, the dates for
7 exchanging written testimony and all that kind of stuff?

8 MR. OSHINSKY: Yes.

9 MR. KNOWLES-KELLETT: We can do that, Your Honor.

10 JUDGE SIPPEL: That's much easier.

11 MR. KNOWLES-KELLETT: It will be easier because Mr.
12 Oshinsky is going to be on vacation. Mr. Jacobs and everybody
13 has holidays to celebrate. So, we'll work it out and get it
14 --

15 JUDGE SIPPEL: I must be missing something. I'm
16 not going to be away on vacation. I don't have any holidays
17 to celebrate. What's lacking with me? Did you win the
18 lottery or something?

19 MR. OSHINSKY: No, no. I'm obligated to take a
20 certain trip, Your Honor.

21 JUDGE SIPPEL: Enough said. Enough said. Okay,
22 that's it. I will -- I'll give you 10 days. Is that fair
23 enough, to bring in the suggested dates?

24 MR. KNOWLES-KELLETT: Yes.

25 JUDGE SIPPEL: You can do that?

1 MR. KNOWLES-KELLETT: Yes.

2 JUDGE SIPPEL: Okay, and that's calendar days, not
3 business days, and you know, there will be a short order
4 issued, coming out of this conference. So, try not to lose
5 track of too much. Thank you very much, Mr. Jacobs.

6 MR. JACOBS: Thank you.

7 MR. OSHINSKY: Thank you.

8 JUDGE SIPPEL: Thank you, all. We're in recess.

9 (Whereupon, the above-entitled matter went off the
10 record at 11:17 a.m.)
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Name of Hearing

MB DOCKET NO. 14-82

Docket No. (if applicable)

445 12th STREET, S.W., WASHINGTON, D.C.

Place of Hearing

February 16, 2017

Date of Hearing

We, the undersigned, do hereby certify that the foregoing pages, numbers 118 through 158, inclusive, are the true, accurate and complete transcript prepared from the reporting by

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February 16, 2017

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Date

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February 16, 2017

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